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To Whom It Concerns:

Please forward this information to David T. Fox, the examiner for patent application #09/998,664. He is with Group Art Unit 1638, Office P/1638. This submission is for information supplemental to the application, but from an outside party. We are not in anyway connected with Tom Hoegemeyer, the applicant.

Margaret Smith and I are corn breeders, and we feel that this claim in application #09/998,664 is not patentable because it is obvious and represents prior knowledge and practice. Last fall we attempted to provide this information and were told that such a submission, coming more than 3 months after the initial application, required a fee of \$180 for its consideration. We are prepared to pay the fee. Today I was instead told that we were not allowed to provide this critical information to anyone in the USPTO. However, I am sure that there is a standard procedure for the public to provide information so that examiners can reach the correct conclusions concerning patent applications.

I will be happy to work with Mr. Fox to verify the information that we have noted and other information that continues to come in. We are very impressed with Mr. Hoegemeyer's ingenuity and integrity, however we feel his claim falls within the public domain. This attached letter was previously sent to Mr. Hoegemeyer, so he is also aware of our position.

Peace,

*Frank J. Kutka*

Frank Kutka  
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fk29@cornell.edu (please also respond to Dr. Smith at mes25@cornell.edu)

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17 January 2005

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Dr. Tom Hoegemeyer  
Hoegemeyer Enterprises  
1755 Hoegemeyer Rd.  
Hooper, NE 68031

e-mail: drtom@hoegemeyer.com

Dear Dr. Hoegemeyer:

We have reviewed your patent application (#20020104115) for your claim concerning yellow dent corn inbreds homozygous for Gals and the methods for breeding them. Certainly your work is impressive and well-founded, but we do not agree that this work is original enough to warrant a patent. Our reasons are as follows:

1. Gals has been used for years to prevent outcrossing with unwanted pollen, mostly by popcorn breeders and growers but also by breeders of white food grade corn at the University of Missouri (e.g., they released Mo501w and other dent corn inbreds with Gals from popcorn in the 1970s).

2. Popcorn breeders have been using blue aleurone testers for breeding lines homozygous for Gals for many years and this is widely known. We learned of this technique from Ken Zeigler, the popcorn breeder at Iowa State, before your application was submitted. Contact Ken at [kenzieg@iastate.edu](mailto:kenzieg@iastate.edu).

3. Marty Sachs says that he has had a w22 (yellow dent inbred) line that is homozygous for Gals since the early 1990s. Contact Marty at [msachs@uiuc.edu](mailto:msachs@uiuc.edu).

4. Major Goodman at North Carolina State has released many field corn lines that carry Gals. Most of these, like your gene sources, have white kernels. However, according to release notes from the North Carolina Agricultural Research Service, NC302 and NC338 are yellow inbreds (apparently released in the mid-1990s) that apparently carry Gals. These lines were released before the release of the white lines you used as source materials.

5. Jerry Kermicle has written extensively about gametophytic sterility and his papers suggest that Gals may be widespread throughout the tropics.  
([http://www.cimmyt.org/abc/geneflow/geneflow\\_pdf\\_eng1/Geneflow\\_Cross.pdf](http://www.cimmyt.org/abc/geneflow/geneflow_pdf_eng1/Geneflow_Cross.pdf))

Given these facts, we are of the opinion that while your new lines are yours and we hope very useful, the ideas of using Gals in field corn (regardless of its color) to prevent outcrossing and of using colored corn lines to assist in the backcrossing procedure are not original. Therefore, we would prefer it if you simply dropped your claim, though we are prepared to pay the fee and present these points to the U.S. Patent Office as a matter of principle if need be. The Cornell Corn Project has had similar work going on since the summer of 2002 and we have discussed the idea of Gals as a method to prevent GMO contamination with breeders across the country since 2001. We consider the idea to be firmly in the Public Domain.

Sincerely,

Margaret E. Smith  
Frank J. Kutka

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